

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

April 2, 2009

10:13 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

OMNIBUS HEARING

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HEARING re Doc #16543; Motion for Interim and Final Order  
Authorizing Debtors to (I) Enter into Second Amendment to  
Accommodation Agreement with Certain Participating DIP Lenders  
And (II)(A) Enter into Related Documents and (B) Pay Fees and  
Expenses in Connection Therewith

HEARING re Doc #16535; Motion for Approval of Debtors'  
Compromise and Settlement With Committee of Eligible Salaried  
Retirees and Delphi Salaried Retirees' Association (related  
document(s) [16535])

HEARING re Doc #16536; Order to Show Cause - Motion for  
Authorization to Amend Accommodation Agreement (related to Doc.  
#16534)

HEARING re Doc #16537; Order to Show Cause - Motion for  
Approval of Debtors' Compromise and Settlement with Committee  
of Eligible Salaried Retirees and Delphi Salaried Retirees'  
Association (related document(s) [16535])

Transcribed By: Clara Rubin

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1 P R O C E E D I N G S

2 MR. BUTLER: Judge, good morning. Jack Butler,  
3 Kayalyn Marafioti and Eric Cochran on behalf of the debtors for  
4 this special omnibus hearing. We have four matters on the  
5 agenda today. And with Your Honor's permission, we are within,  
6 like, minutes of having a satisfactory resolution among the  
7 parties on how to address those motions.

8 THE COURT: Okay.

9 MR. BUTLER: And I'd like --

10 THE COURT: So you'd like some more time?

11 MR. BUTLER: I'd like at least another ten minutes to  
12 confirm the agreements.

13 THE COURT: Okay.

14 MR. BUTLER: And the Treasury's here participating  
15 with us, Your Honor.

16 THE COURT: All right. Well, I got you all in the  
17 courtroom, but I guess you're all going to leave for about ten  
18 or fifteen minutes.

19 MR. BUTLER: Yeah. And I think it won't be longer  
20 than that. I'm just writing some things down.

21 THE COURT: All right. You can go back in the  
22 conference room, if you want.

23 MR. BUTLER: Thank you very much, Your Honor.

24 THE COURT: Okay. Thank you. Did you hear that,  
25 Mr. Gloster?

1 MR. GLOSTER: I did, Your Honor.

2 THE COURT: Okay. Thanks.

3 (Recess from 11:07 a.m. until 11:31 a.m.)

4 THE COURT: Please be seated. Okay, we're back on  
5 the record in Delphi.

6 MR. BUTLER: Your Honor, thank you for giving us that  
7 recess. It gave us an opportunity to reach an agreement on how  
8 to approach this hearing and the relief we're requesting today,  
9 and that agreement is supported by the debtors, the U.S.  
10 Treasury, General Motors, the creditors' committee. That  
11 relief has been agreed to and is being recommended by the agent  
12 for the DIP lenders and other key members of the steering  
13 committee that's working with the company. Assuming Your Honor  
14 approves our approach today, there will be some additional  
15 voting that will take place this evening, as would be required  
16 to implement the authority we would be seeking today.

17 There are four items up for hearing today. The --  
18 let me just address two items we're asking to be adjourned.  
19 First, there is a motion for order authorizing the debtors to  
20 enter into a fourth and fifth amendment to the arrangement with  
21 General Motors Corporation at docket number 16411. And there  
22 is the debtors' -- the debtors also filed a motion for an order  
23 seeking approval of the option exercise agreement with General  
24 Motors Corporation, which is found at docket number 16410.  
25 Your Honor, we're continuing to discuss those matters with our



1 stakeholders and with the U.S. Treasury. And we'd ask Your  
2 Honor to adjourn those matters to the April 23rd omnibus  
3 hearing for further consideration.

4 THE COURT: Okay. I'll do that.

5 MR. BUTLER: Thank you, Your Honor. Now going to the  
6 two matters that are on the OSC agenda, Your Honor considered  
7 orders to show cause earlier this week to bring before the  
8 Court two motions today. The first is the second accommodation  
9 amendment motion found at docket number 16534, and the second  
10 is the salaried OPEB settlement motion found at docket number  
11 16535. I'm going to address them, with the Court's permission,  
12 in that order.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, this first matter, then,  
15 matter number 1 on the OSC calendar, found at docket number  
16 16534, is an interim hearing on the debtors' expedited motion  
17 for an order seeking an amendment to the accommodation  
18 agreement with certain participating DIP lenders to enter into  
19 related documents and to pay fees and expenses in connection  
20 with this transaction. The Court scheduled this hearing by  
21 order to show cause, entered at docket number 16536. I  
22 represent to the Court the debtors have complied with the  
23 notice provisions of the order, and we have filed an affidavit  
24 of service by KCC, which is on the docket.

25 Your Honor, this is the second amendment to the

1 accommodation agreement between the debtors and their DIP  
2 lenders, which was approved originally by this Court on  
3 December 3, 2009 at docket number 14515. Your Honor previously  
4 approved a first amendment and a supplemental amendment to the  
5 accommodation agreement in connection with the first amendment  
6 by order dated February 25, 2009, found at docket number 16377.

7 Your Honor, the -- this motion arises because of the  
8 debtors' need to reset certain of the milestones and other  
9 obligations under the company's accommodation agreement with  
10 the participating DIP lenders, and it is -- and it reflects,  
11 among other things, the engagement of the auto task force of  
12 the United States Department of Treasury in the debtors'  
13 Chapter 11 cases. The auto task force filed an appearance  
14 yesterday. They also filed a statement to this motion that was  
15 at docket number 16541. And I'm pleased to report that the  
16 Treasury, working with General Motors and our other  
17 stakeholders, have agreed to engage in discussions regarding an  
18 appropriate resolution to this case which the debtors believe  
19 will result in proposed modifications to our confirmed plan of  
20 reorganization being filed and the debtors moving forward.  
21 Those discussions are going to begin in earnest early next week  
22 in Washington, DC. And the parties have met over the last  
23 twenty-four to forty-eight hours to discuss the timetable on  
24 which they would seek to achieve resolution of the matters that  
25 have been put on the discussion agenda among them.

1 As a result of that discussion, the agent and the  
2 other key members of the DIP steering company who've  
3 participated in these discussions with us over the last day or  
4 so have agreed to recommend to the participant lenders that  
5 they enter into modifications to the second amendment which  
6 otherwise became effective earlier this week, subject to Your  
7 Honor's approval, in the respects that I'm going to lay out  
8 here on the record in just a couple of minutes. And that --  
9 these modifications, the debtors believe, which have been  
10 approved by the same parties, the U.S. Treasury, General  
11 Motors, Delphi and the creditors' committee, and are supported  
12 here today, should create, in the debtors' view, the  
13 environment to move forward with these very important emergency  
14 discussions during the month of April while continuing to  
15 provide the opportunity for the debtors to have access to  
16 liquidity to fund its operations during that period.

17 Your Honor, the changes that we would propose making,  
18 and by oral motion do here make, to the relief we're requesting  
19 is as follows: First, the company would agree to, by April  
20 6th, make a payment on the tranche A and B loans in the amount  
21 of eighty-seven million dollars, which reflects the current  
22 amount that is in the tranche C interest reserve. Your Honor  
23 may recall that there was an interest reserve; the debtors have  
24 been paying into that. That amount's eighty-seven million.  
25 And there is an agreement from the parties that amount can be

1 used by April 6 to reduce the outstanding amount of the As and  
2 Bs.

3 The second agreement and change would be that the  
4 milestone that had been in the proposed -- or had been in the  
5 second amendment that would require the debtors to have access  
6 to incremental GM financing in the amount of 450 million by  
7 April 7th is being eliminated.

8 The third arrangement is that the milestone that had  
9 been in the second amendment dealing with having a timetable  
10 agreement by April 7th has been eliminated.

11 Fourth, the -- the fourth modification would be that  
12 the minimum borrowing base cash collateral account balance will  
13 be 160 million dollars until -- excuse me, will be a hundred  
14 and -- yes, 160 million dollars until April 15th. And from  
15 April 19th until we have a satisfactory GM transaction term  
16 sheet, which I'll define in a few minutes, that amount will be  
17 140 million dollars. Thereafter, once and upon the GM  
18 transaction term sheet being acceptable to the required first-  
19 priority participant lenders or the required total  
20 participant -- and the to -- let me get it right. I believe  
21 it's and the required total participant lenders. Assuming that  
22 that consent has come in, then the amount would drop to forty-  
23 seven -- the minimum borrowing base cash collateral account  
24 balance would drop to forty-seven million. These amounts, Your  
25 Honor, are consistent with the cash flow projections the

1 company has presented to the stakeholders for continuing to  
2 operate in the ordinary course of business during the month of  
3 April, the -- through what would be, I think, April 24th, which  
4 is the outside date, and I'll walk through this with you, the  
5 outside date for these term sheet agreements to have to be  
6 agreed to.

7 The fifth item is an agreement that, rather than have  
8 these other milestones that we have had that we've now  
9 eliminated, there would be a milestone on April 17th that would  
10 say that by, on or prior to April 17th, it will be the debtors'  
11 responsibility to deliver a term sheet with respect -- that is  
12 agreed to by Delphi, GM and the U.S. Treasury that addresses  
13 globally GM's participation in these Chapter 11 cases and their  
14 contributions to Delphi's emergence. That transa -- that term  
15 sheet has to be delivered by the 17th or there would be an  
16 automatic accommodation default. I'll explain the implications  
17 of that in a few minutes.

18 THE COURT: And it's delivered to the --

19 MR. BUTLER: The agent --

20 THE COURT: The agent?

21 MR. BUTLER: -- for the DIP steering committee.

22 THE COURT: Okay.

23 MR. BUTLER: Once we have delivered it, it would be  
24 an automatic accommodation termination default if the required  
25 first-priority participant lenders or the required total

1 participant lenders either notified Delphi within three  
2 business days after delivery that the GM transaction term sheet  
3 was not satisfactory, or, if they fail to notify us within  
4 three business days, that the term sheet is satisfactory. So  
5 they have to give us an affirmative vote within three business  
6 days of getting it. So if we delivered it on the 17th, which  
7 is a Friday, the date by which you would need that to come in,  
8 I believe, is Wednesday, if I'm counting my business days  
9 correctly. It would be the 22nd of April.

10 And the reason for this, Your Honor -- this sounds  
11 like a lot of dates here, but the point, really, of this  
12 calendar is to create an environment that's responsive to the  
13 U.S. Treasury's request to have additional time to diligence  
14 matters and to engage in discussions with the Delphi  
15 stakeholders on these matters. And it was important to  
16 establish a timetable that the auto task force was satisfied  
17 with, that our DIP lenders found acceptable, that our statutory  
18 committee believed was appropriate and that GM and Delphi were  
19 prepared to engage in.

20 And I think the important news here is we've  
21 established a timetable and an arrangement that these parties  
22 believe is appropriate under the circumstances. And I will  
23 let -- I believe Mr. Rapisardi's here on behalf of the auto  
24 task force, who will address the Court in a few minutes.

25 The -- and while -- and I'll simply say when you walk

1 through how the mechanics of the accommodation agreement works  
2 with these various items I've put on the record this morning,  
3 the practical implication here is that by April 24th, assuming  
4 we deliver the -- we deliver something to the DIP lenders, by  
5 April 24th they have to be in agreement with GM, the Treasury  
6 and Delphi that the GM transaction term sheet is acceptable.

7 MR. BERNSTEIN: Your Honor, Don Bernstein from Davis  
8 Polk & Wardwell for the DIP agent. There's one clarification  
9 to what Mr. Butler has put on the record. Mr. Butler mentioned  
10 the outside date of the 24th. He also mentioned the three-day  
11 deadline after delivery of a term sheet. The outside date is  
12 the 24th. So if a term sheet was delivered during the week  
13 between the 17th and the 24th, the three-day period would get  
14 shortened. For example, if they delivered it on Thursday, the  
15 23rd, it would only be a one-day period. And if they hadn't  
16 heard that the term sheet was approved by the 24th, that would  
17 be the outside deadline because the automatic default would  
18 have occurred and the 24th is the outside date.

19 THE COURT: I thought they had to deliver it by the  
20 17th?

21 MR. BERNSTEIN: They do have to --

22 MR. BUTLER: What we have is a cure period, Your  
23 Honor.

24 THE COURT: All right.

25 MR. BERNSTEIN: If they're late.

1 THE COURT: That's why there's an outside date of the  
2 24th.

3 MR. BERNSTEIN: Exactly.

4 THE COURT: Okay.

5 MR. BERNSTEIN: Thank you, Your Honor.

6 MR. BUTLER: And the point of this, and I think it's  
7 important to say this because we're speaking on the record  
8 here, is there's a lot of logistics associated with this. But  
9 from the debtors' perspective, the reason that we're supportive  
10 of this and recommend it to the Court is it creates a runway  
11 that, I agree with Mr. Bernstein, has an outside date -- unless  
12 it's further extended by consent by the parties, currently has  
13 an outside date of April 24th. It is a runway that, the U.S.  
14 Treasury is going to tell Your Honor in a few minutes, is  
15 acceptable to the auto task force. And, therefore, we have  
16 achieved one very important effort we've been working on for  
17 the better part of the last several months, which is to create  
18 the terms of engagement and a timetable that's acceptable to  
19 the parties. It is one thing for the debtors to imagine their  
20 own timetables. It is another thing for having the key players  
21 who need to reach these agreements actually come before Your  
22 Honor and tell them they think these timetables are appropriate  
23 and they're prepared to move forward with them.

24 And, so, I agree with Mr. Bernstein that April 24th  
25 is the outside date. I also believe that if we're making



1 progress the debtors will certainly ask people to extend that  
2 date beyond April 24th if it becomes necessary. And I assume  
3 people will consider that request and act in their best  
4 interest, whatever those interests may be.

5 So we are working, I think, together, and I consider  
6 this to be a very important and very positive development.

7 The last item, the last modification I wanted to  
8 make, and Mr. Resnick will check me on this to make sure I said  
9 them all, I think the last modification I need to make here is  
10 that the minimum liquidity amount will be twenty-five million  
11 dollars throughout the term, the remaining term of the  
12 accommodation agreement, period. And that's important because  
13 the borrowing base cash collateral formulas operate along the  
14 minimum liquidity amount to provide the -- some of the  
15 mechanics for how the debtors finance their case under the  
16 accommodation agreement.

17 May I have one moment, Your Honor?

18 THE COURT: Yes.

19 (Pause)

20 MR. BUTLER: Your Honor, the one other -- and this is  
21 a mechanic -- as Your Honor may recall under the April 7th  
22 milestones, have we not met the milestones next week, there  
23 will be a 117 million dollar paydown of the -- of one of the  
24 cash collateral accounts that exists here. That paydown would  
25 be triggered if we didn't make the April 17th delivery. So

1 it's been extended, in essence, from April 7th to April 17th.  
2 This is the same paydown requirement we had previously that we  
3 have been able to resolve and negotiate to amendment. But it  
4 is technically correct, and Mr. Resnick properly reminds me  
5 that that existing requirement has been extended out to April  
6 17th.

7 THE COURT: And that's if you simply deliver the term  
8 sheet on that day, then --

9 MR. BUTLER: Then you don't have to do that. And if  
10 we don't deliver the term sheet -- actually we have a cure  
11 period of five business days --

12 THE COURT: All right.

13 MR. BUTLER: -- after that date, which, by the way,  
14 happens to end on April 24th, too.

15 THE COURT: Okay.

16 MR. BUTLER: So, it is -- as I say, there's a lot of  
17 mechanics that have been thought out here by the parties. But  
18 what it boils down to, from the debtors' perspective, is we  
19 have an agreed approach on how to --

20 THE COURT: It's to facilitate good-faith discussions  
21 on an expedited timetable.

22 MR. BUTLER: Exactly, Your Honor.

23 THE COURT: Okay, with a little play in the joints if  
24 people are engaging in good faith, but the playing gets  
25 cancelled or something like that.

1 MR. BUTLER: Right. And, Your Honor, for that  
2 reason, one of the things I'd also like Your Honor to do,  
3 subject to the Court's calendar, is to set a status conference,  
4 a chambers conference, for April 21st, which I think is a  
5 Tuesday, in the afternoon, so that we've got a checkpoint. We  
6 may not need to use it but, in the event we do need to use it,  
7 I think it's appropriate to have these parties, who have been  
8 party to this discussion and represent their agreements to you,  
9 come before the Court before anything happens later in that  
10 week. So I'd like to ask for a --

11 THE COURT: 2 o'clock?

12 MR. BUTLER: That would be great, Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: I think, Your Honor, while --

15 THE COURT: That could be either on the record or off  
16 the record, or both.

17 MR. BUTLER: Yeah. Thank you, Your Honor. I think  
18 initially we would ask for it to be off the record, but it may  
19 be required for us to go on the record, whatever Your Honor  
20 decides at that time, what you want us to do.

21 I believe that -- I know there are a couple of  
22 parties we wanted to hear from, but I think we were going to  
23 start with Mr. Rapisardi on behalf of the auto task force, who  
24 wanted to address the Court.

25 THE COURT: Good morning.

1 MR. RAPISARDI: Good morning, Your Honor. John  
2 Rapisardi, Cadwalader, on behalf of the auto task force of the  
3 Department of Treasury. Your Honor, the auto task force comes  
4 to this case new. This case is -- parties have been living  
5 with this, including yourself, Your Honor, for the last three  
6 and a half years. The auto task force has literally, within  
7 the last week and a half, been conducting extensive due  
8 diligence. Realizing the importance of this case and its  
9 importance to General Motors, we need some more time, as we  
10 indicated, in the statement that was filed with the Court  
11 yesterday.

12 We are in agreement with everything that Mr. Butler,  
13 the parties have put on the record with respect to the  
14 timelines that have been proposed. We are convening a meeting  
15 in Washington to get the major constituencies together. And  
16 it's our hope and desire that that will lead to a global  
17 resolution of all issues affecting General Motors and Delphi,  
18 and will bring about a successful result in this case. There  
19 are no guarantees, but it's certainly worth the effort to try  
20 to bring everything to a head and in a successful way. The  
21 Treasury Department -- the auto task force stands ready and  
22 willing to do as much as possible to help the parties come  
23 together and find a resolution.

24 THE COURT: Okay. Thank you.

25 MR. BROUDE: Good morning, Your Honor. Mark Broude,

1 Latham & Watkins, counsel for the creditors' committee.  
2 Mr. Butler's correct. The creditors' committee is on board  
3 with this timeline. We do note that the approval today is an  
4 interim approval, and obviously we reserve all our rights come  
5 the hearing, which is well scheduled for the 23rd. Considering  
6 final approval, depending upon what happens between now and  
7 then, Treasury has invited us to participate on Monday, and we  
8 will be there.

9 THE COURT: Okay. Thanks.

10 MR. BERNSTEIN: Your Honor, Don Bernstein, Davis Polk  
11 & Wardwell. We are going to document this this afternoon. And  
12 as Mr. Butler said, we are going to go out for our vote this  
13 evening, and we're very hopeful that we'll have the votes to do  
14 this. And hopefully this will be implemented this week.

15 THE COURT: Okay. Thank you. Anyone else? I had a  
16 couple of questions. The first point you made about the  
17 eighty-six million being paid from the tranche C interest  
18 reserve, that's permitted under the agreement that set up the  
19 reserve?

20 MR. BUTLER: Yes, Your Honor. It actually --

21 THE COURT: I haven't gone back and looked, but I  
22 assume you all have.

23 MR. BUTLER: I'm saying that it is permitted. The  
24 problem -- I mean, the reason the reserve was set up -- it was  
25 something that Delphi had negotiated for -- was that the DIP

1 agreement prohibits the payment of interest post-default in the  
2 DIP agreement to the tranche C lenders until the tranche A and  
3 B are paid out. Delphi wanted, as a basis of good faith, to  
4 fund that interest on a current basis out of operations, and  
5 we've done that. And that's why we set up the tranche C  
6 reserve. And the lenders have now concluded that it's  
7 appropriate to make this payment, and the debtors do not object  
8 to it. And my understanding is there are other parties who are  
9 here in the courtroom also that have agreed to that  
10 application.

11 MR. RESNICK: Your Honor, I'm sorry, just one  
12 clarification. This is Brian Resnick of Davis Polk. Your  
13 Honor, you raise an excellent point. It would actually be an  
14 amendment to the credit agreement -- it would require an  
15 amendment to the credit agreement. So the document would be  
16 changed to reflect that, and that would be a required lender  
17 vote. So we would be hopeful that we would get that vote.

18 THE COURT: Okay.

19 MR. BUTLER: It's part of the same mechanics, those  
20 votes.

21 THE COURT: I've reviewed the fee letters. And I  
22 guess I have the following question, and it applies to both the  
23 tranche C collective as well as the GE. I haven't looked at  
24 the 2019 statement. Are the debtors comfortable that the  
25 tranche C collective is really a representative group of those

1 lenders? And it's not just someone vocal who has hired a  
2 lawyer. I'm assuming the answer is yes, that you are  
3 comfortable with that. But I wanted to make sure before we  
4 approved that arrangement.

5 MR. BUTLER: Willkie Farr has filed a 2019 to  
6 describe the tranche C Collective. We have notified Willkie  
7 Farr that the debtors don't believe that that disclosure is  
8 complete and accurate as required by the rules. But we also  
9 told them we weren't going to take action on that. It did  
10 identify the members of the tranche C Collective; it did not  
11 provide some other disclosures. We've been able internally to  
12 understand the holdings of a number of those members. And the  
13 debtors believe, and I think the agent concurs with us, that  
14 the tranche C collective's support is necessary to be able to  
15 implement these arrangements the way the voting mechanics work.

16 THE COURT: So that reflects the members of that  
17 collective really are holders of a critical amount of debt.

18 MR. BUTLER: I think it is without question. The  
19 holders of that -- of the collective hold a very material  
20 amount of tranche C debt, and some of them hold actually  
21 tranche A and B debt.

22 THE COURT: All right. I had a similar question with  
23 regard to GE. Is its role here truly structurally significant,  
24 or is this alternatively someone who is just sort of throwing  
25 their weight around and --

1 MR. BUTLER: Actually, I think GE has been a very  
2 constructive part of this process, and they actually have a  
3 group of tranche A and B lenders, as I recall, who work with  
4 them.

5 THE COURT: Okay.

6 MR. BUTLER: And so there is a -- we don't call it  
7 the tranche A-B collective, but there is a group of lenders  
8 that work with GE and that GE and its advisors represent on the  
9 steering committee.

10 THE COURT: Okay. All right. I think that the only  
11 other point I had is, both in terms of the second amendment and  
12 what you've just outlined, there are a couple of default events  
13 that are truly based on simply the sending of a notice that  
14 people aren't satisfied with in the amendment with an amended  
15 plan and in the -- what you've just laid out on the record, the  
16 term sheet. I guess I'm more concerned with the amended plan  
17 point. My assumption when I read those types of provisions is  
18 that they're always qualified by reasonableness. If a plan  
19 provides that someone's going to be paid out in full, I don't  
20 see how they have a right to complain, for example. On the  
21 other hand, if a plan or an amendment or a term sheet would  
22 purport to -- would be truly contrary to what would be required  
23 under the Bankruptcy Code, then I certainly understand that  
24 type of provision. So I'm assuming that's how people are  
25 looking at those rights.



1 MR. BUTLER: I think that's a fair statement, Your  
2 Honor.

3 THE COURT: It's not just an option, in other words.

4 MR. BERNSTEIN: Well, Your Honor, I mean, during the  
5 relevant period here, we would all like to see a plan filed,  
6 but the odds are that it won't be. But I think what we have is  
7 the normal contractual requirement of acting in good faith --

8 THE COURT: That's fine.

9 MR. BERNSTEIN: -- with respect to that point.

10 THE COURT: And, again, my focus was on the plan  
11 because that's the only provision I had read. And I don't like  
12 to give people vetoes over plans that are separate and apart  
13 from their rights under the Code, and I don't think that's the  
14 case, here.

15 MR. BUTLER: And, Your Honor, on that point, I should  
16 say I agree with Mr. Bernstein, just to make sure the record's  
17 clear. I think the debtors agree that it is unlikely that the  
18 modified plan of reorganization -- the plan modifications be  
19 filed during the month of April.

20 THE COURT: Right.

21 MR. BUTLER: I agree with that. I think that one of  
22 the things that the parties will be negotiating is what the  
23 timetable is for filing, assuming we can reach agreement on the  
24 term sheet. But the timing will be for the filing of those  
25 plan modifications. And that will implicate, I believe, that

1 and, I think, frankly, that agreement will be very good news  
2 for Delphi and all of its stakeholders. And I think if we  
3 reach the agreements that the parties are engaged in and that  
4 Mr. Rapisardi has indicated the auto task force of the U.S.  
5 Treasury's now engaged in, if that leads to a consensual  
6 agreement, as we all are working to make it do so, I think the  
7 announcements we would be making upon the completion of that  
8 process and the timetable that we would be announcing for the  
9 filing of plan modifications and the prosecution of a modified  
10 plan would be, at that point in time, something that people  
11 could take some comfort in. I don't want to speculate as to  
12 what those timetables would be now because I think we have to  
13 reach agreement on the specifics of how we're going to proceed,  
14 and then we will put together a timetable.

15 I will tell the Court we've had conversations with  
16 many of these stakeholders about what that timetable would be,  
17 and I don't think that there is a material disagreement among  
18 the parties as to what the timetable would be. I think the  
19 focus is on getting the actual agreements on the key emergence  
20 issues, which, among other things, involves some bit of an  
21 allocation of risk, as these negotiations always do, and that,  
22 from the debtors' perspective, we think it's extremely good  
23 news today that we now have a process, if Your Honor's prepared  
24 to approve this, that will allow that engagement to occur.

25 THE COURT: Okay. Anyone else? All right, I will

1 approve the second amendment as modified on the record. And,  
2 obviously, it is subject to the necessary votes in the lender  
3 group. And I agree with you that the focus on not only the  
4 short-term continuation of the supply arrangement with GM but  
5 also the overall resolution of the relationship is a good  
6 thing. And I encourage you all to look at the big picture on  
7 that as well as the small picture. I know that, in just  
8 reading the government's response to the automaker's proposals,  
9 the governments recognize the importance of continuing the  
10 supply relationship, generally without disruption, and that's  
11 obviously critical. But it's clear to me, from reading the  
12 responses to the steering motion, that major constituents in  
13 this case, I think correctly, are at the point where the  
14 debtors have to get beyond, sort of, short-term fixes and focus  
15 on the plan. And I know the debtors have wanted to do that  
16 probably more than anybody. So I'm glad the parties-of-  
17 interest are now setting a timetable to do that. That's tight,  
18 but I think it's achievable, given all the work that's been  
19 done.

20 MR. BUTLER: Thank you very much, Your Honor.

21 THE COURT: So as far as the order is concerned, I  
22 mean I'm approving the relief you're seeking today, and the  
23 record reflects that and people are acting in reliance upon  
24 that. And I think the terms that you've outlined are clear;  
25 the parties certainly know what they are to the extent that

1 they haven't been. I guess you'll be giving me a modified  
2 order?

3 MR. BUTLER: We will be submitting, Your Honor, a  
4 modified order. We'll attach to it the document that will be  
5 prepared by Davis Polk on behalf of -- we'll be working with  
6 them on whatever -- I think that document -- in the appropriate  
7 form under the accommodation agreement to implement what's been  
8 agreed to today. And this does, of course, remain subject to  
9 the vote that we have to obtain from the requisite participant  
10 lenders under the terms of the accommodation agreement. And my  
11 understanding is the steering committee's going to be pursuing  
12 that today.

13 MR. RESNICK: That's right. And, Your Honor, because  
14 the documentation will require an amendment to the credit  
15 agreement, I think the form of order will need to change a  
16 little bit to reflect that because now it just approves an  
17 amendment to the accommodation agreement.

18 THE COURT: That's fine. So I'll look forward to  
19 getting that. But I've approved the motion as of today.

20 MR. BUTLER: Thank you. Thank you, Your Honor. All  
21 right, turning now, then, to the second matter on the OSC  
22 agenda, this is the salaried OPEB settlement motion at document  
23 number 16535. And this matter, Your Honor, is unopposed. This  
24 is, Your Honor, intended to be a nonevidentiary hearing on the  
25 debtors' expedited motion for an order approving the debtors'

1 compromising settlement with the retirees' committee and the  
2 Delphi Salaried Retirees Association regarding termination of  
3 salaried OPEB.

4 Mr. Trent Cornell from the Stahl Cowen firm is in  
5 court today for the retirees' committee and the Delphi Salaried  
6 Retirees Association, and I believe Mr. Gloster is  
7 participating in this hearing telephonically.

8 MR. CORNELL: That's correct, Your Honor.

9 MR. GLOSTER: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. BUTLER: The Court scheduled this hearing by  
12 order to show cause entered at docket number 16537. The  
13 debtors have complied with the notice provisions of that order  
14 to show cause, and there has been an affidavit of service filed  
15 by KCC with the court and is reflected on the docket. Your  
16 Honor, this settlement relates to the debtors' salaried OPEB  
17 termination motion. At a hearing on February 24th, this Court  
18 determined that Section 1114 of the Bankruptcy Code does not  
19 apply to retiree welfare benefits, that the debtor reserved the  
20 right to amend or modify under nonbankruptcy law. The Court  
21 also appointed a retirees' committee, primarily to determine  
22 whether benefits had vested for any retiree group or retiree.

23 At a further hearing on March 11th, the Court  
24 finalized its earlier ruling and authorized the debtors to  
25 cease contributing to salaried OPEB effective on April 1 of

1 this year. At another hearing on March 17th, the Court denied  
2 a motion for a stay pending appeal. The Delphi Salaried  
3 Retirees Association and the retirees' committee filed appeals  
4 with the district court that are pending before the Honorable  
5 Deborah Batts. After this Court denied the motion for a stay  
6 pending appeal, the association made an emergency motion for a  
7 stay pending appeal to the district court. Judge Batts  
8 referred that stay motion to part one, and the Honorable Robert  
9 Sweet was scheduled to hear that motion on March 31st. On  
10 March 30th, Judge Sweet granted an adjournment of the hearing  
11 of the stay motion pending in the district court until April  
12 7th in light of the progress of the settlement discussions and  
13 the hope that this Court would consider the settlement I'm  
14 about to present today.

15 Your Honor, the relief that is requested is set forth  
16 in our motion and in the proposed order. I'm briefly going to  
17 summarize it, but as I do when I put these settlements on the  
18 record, it is -- my summary is qualified in its entirety by the  
19 actual documents that have been filed before the Court and are  
20 before Your Honor. But just briefly, the agreement that has  
21 been reached and that we're asking Your Honor to approve under  
22 Section 363(b) and Bankruptcy Rule 9019 would authorize a  
23 settlement that is in complete and final resolution of the  
24 retiree committee's and association's appeal of the OPEB  
25 termination orders. I should point out, Your Honor, that while

1 more than 1,600 parties objected to the motion, the only  
2 appeals lodged were by these two groups. And so if Your  
3 Honor's prepared to approve this settlement, this would  
4 represent a full and final resolution of these matters without  
5 even going into the issue as to the committee's ability to  
6 settle this on behalf of anyone in any event. The only  
7 appellants to the order were these two entities, and they are  
8 both here and participating in the settlement.

9 The major economic agreement is the debtors will pay  
10 8.75 million in overall subsidy payments to the retirees'  
11 committee for the benefit of Delphi's salaried retirees, not  
12 subject to reduction because of enrollment levels, and  
13 comprised of a one million dollar hardship fund payable at the  
14 beginning of May 2009, a 500,000 dollar voluntary employees'  
15 beneficiary association setup cost payment, also payable at the  
16 beginning of May 2009 to set up the VEBA. The debtors have  
17 agreed that the retirees' committee may use those proceeds, the  
18 VEBA -- what's been allocated for the VEBA setup, for hardship  
19 funds or otherwise subsidizing retiree medical benefit costs if  
20 there's -- in the discretion of the committee. The debtors  
21 would -- the payment terms -- the additional payment terms  
22 would be 1.25 million per month for five months, payable  
23 monthly at the beginning of each of June through October 2009,  
24 and a final payment of 1 million on November 1, 2009.

25 I should point out, the settlement, Your Honor,

1 includes an invocation of Section 1129(a)(13) of the Bankruptcy  
2 Code, which would provide that, in any plan of reorganization,  
3 these payments would continue on the schedule I've just  
4 described as an agreement between the parties as to the  
5 treatment of this claim.

6 The debtors have also agreed, through June 30, 2009,  
7 to offer salaried retirees a nonretroactive benefits  
8 reinstatement opportunity as of the first of the following  
9 month, and we've agreed to reasonably cooperate with retirees  
10 who would like to continue benefits on a self-pay continuation  
11 basis to permit payment deductions from their pension checks.

12 Next, the debtors have agreed to pay up to an  
13 additional 250,000 dollars in attorneys' fees to counsel for  
14 the retirees' committee and the association. This is in  
15 addition to the cap Your Honor had set of 200,000 dollars on  
16 attorneys' fees, which Your Honor, I think, had indicated  
17 wasn't actually a cap, it was the amount we were authorized to,  
18 but Your Honor would consider reasonable fees under the  
19 totality of the circumstances, and this would be subject to  
20 reasonableness review by the debtors and payable sixty days  
21 after submission of the statements of account to the debtors.

22 We're asking Your Honor today to -- in the order to  
23 specifically authorize the retirees' committee to establish a  
24 VEBA as contemplated by the appropriate provisions of the  
25 American Recovery Reinvestment Act of 2009 to extend the health



1 coverage tax credit, the benefits provided through a VEBA setup  
2 by a Section 1114 committee or authorized by a bankruptcy  
3 judge.

4 The order also provides that the VEBA established by  
5 the retirees' committee under a 26 U.S.C. Section 501(c)(9)  
6 would be in lieu of the debtors' obligation under paragraph 5  
7 of the final OPEB termination order to establish a VEBA under  
8 certain circumstances.

9 Your Honor, we have also agreed to cause Delphi's  
10 group life insurance provider, MetLife, to permit retirees to  
11 continue their current level of optional term life insurance  
12 coverage as outlined under the program and the notices sent to  
13 retirees without the need to requalify by providing medical  
14 information, and also request that MetLife return all copies of  
15 health questionnaire information provided by the retirees to  
16 continue the benefit.

17 And finally, Your Honor, in terms of how we would  
18 dispose of the appeals, upon entry of a final order approving  
19 this motion and by payment of the first tranche of payments,  
20 those due on May 1st only, the May 1st payments, the retirees'  
21 committee and association will cause the appeals of the OPEB  
22 termination orders, including their motion to stay the  
23 effectiveness of the OPEB termination orders, to be voluntarily  
24 dismissed with prejudice. And they will waive any and all  
25 rights to appeal the OPEB termination orders.

1 I should tell Your Honor that we have also agreed,  
2 and I think it's implicit in how we've been dealing with this  
3 all along, but I'll say it again, that Delphi will continue to  
4 cooperate with the committee's VEBA to facilitate the VEBA  
5 rolling out an HCTC-compatible benefit broadly to retirees in  
6 the event that health care tax credit is triggered by some  
7 subsequent event with the debtors' pension plans. And so we've  
8 agreed to cooperate with that as we have to this point, and I  
9 wanted to make that statement on the record.

10 Your Honor, very briefly, and we put this in our  
11 papers, but I simply want to say, obviously, that we're before  
12 the Court because Section 363(b)(1) requires us to get Your  
13 Honor's approval for the use of estate assets other than -- in  
14 the ordinary course of business and that we need to demonstrate  
15 a sound business justification to that. We believe, under any  
16 appropriate 9019 analysis, given the risks and costs of  
17 continued litigation, the possibility of estate pending appeal,  
18 that would cost more than the amount of the settlement and,  
19 frankly, the benefits of making this final not only for the  
20 debtors but also for our retirees and actually have established  
21 a program that the retirees' committee and the association  
22 believes is an appropriate resolution of this dispute so that  
23 we can address what's a very difficult issue in a manner that  
24 has now been mutually worked out as something that we think  
25 more than justifies the debtors' exercise of their business

1 judgment in approving this matter. We'd ask Your Honor to  
2 exercise the appropriate review under Second Circuit law to  
3 help the debtors give final finality to this transaction.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, we've also asked in this  
6 motion that you waive the ten-day stay under Bankruptcy Rule  
7 6004(h). That is important, as we pointed out in our papers  
8 here. This is unopposed. We've reviewed this matter with the  
9 parties in the courtroom today, certainly with the DIP steering  
10 committee members, as we dealt with this issue. And it is  
11 important, given the passing of April 1st, that we have  
12 finality here so that we can advise our retirees of this  
13 determination.

14 This is particularly important because, under  
15 paragraph 5 of the final OPEB termination order, we agreed to  
16 provide a second-chance mailing notice to people who had  
17 allowed their benefits to lapse as of April 1st. We're in the  
18 process of doing that. And we've been advised by counsel to  
19 the appellants that they believe, as do we, that it's very  
20 important to be able -- to have those notices contain final  
21 information about this settlement that the parties can rely on  
22 as we provide all the information necessary to implement the  
23 path that we've now agreed to consensually with the two  
24 appellants.

25 Now, that's our presentation. We're very pleased to

1 have been able to reach this arrangement. We're appreciative  
2 to counsel, to Mr. Cornell and to Mr. Gloster, for their  
3 cooperation and for the practical approach everyone has taken  
4 to resolve this matter.

5 THE COURT: Okay. I had two questions. The first is  
6 one of the provisions of the settlement says the debtors will  
7 cause MetLife to permit retirees to continue their current  
8 level of optional life term insurance coverage. I just want to  
9 make sure that's something that you can actually do? It's  
10 not --

11 MR. BUTLER: I think it's probably more properly -- I  
12 mean, I'll have to ask you, Mr. Gloster and Mr. Cornell. I  
13 think it's our job to request that they do it and to do  
14 whatever we can within our control to do it. We're not  
15 obligated to sue them to do it. We believe -- and, by the  
16 way --

17 THE COURT: You believe you have the right to --

18 MR. BUTLER: We've already been doing it.

19 THE COURT: Okay.

20 MR. BUTLER: This is not new. We've been already  
21 working with MetLife on these matters.

22 THE COURT: Okay. And then the other question I had  
23 was more for Mr. Gloster and Mr. Cornell. Most of this -- of  
24 the money is being paid to the committee for subsequent  
25 allocation for a hardship fund and then the monthly payments.

1 I have put something in the order that provides that, after the  
2 money has been paid to the committee, the committee will file a  
3 report with the Court to describe how the settlement proceeds  
4 were spent and allocated fairly and equitably to or on behalf  
5 of the salaried retirees. I want to make sure there is  
6 something in your minds, and I know both of you are experienced  
7 in this area, as far as a procedure for using the money most  
8 fairly among the thousands of people who might use it. Is  
9 there something -- do you have something in mind for that? I  
10 mean, is it -- I'm assuming it's more than just someone calling  
11 up and saying I need money.

12 MR. GLOSTER: Yes, Your Honor. This is Dean Gloster,  
13 Farella Braun + Martel, on behalf of the 1114 committee of the  
14 SRA. The committee has actually thought about this and, in  
15 sort of deciding what to do with the money, the plan is that we  
16 would set up a hardship fund which would actually have specific  
17 requirements and that the money in the hardship fund would be  
18 used to fund a portion of the health care premiums of  
19 individuals who were retirees and survivors who suffered  
20 particular hardship and inability to pay for their medical  
21 benefits. And it would be a plan with a summary plan  
22 description, under ERISA, provided to people. There would be  
23 an application process and a specific application that would be  
24 reviewed. And then, as we've done in other cases, there would  
25 be a determination by, initially, a board appointed by the 1114

1 committee and then approved by the 1114 committee, the  
2 determination of that board about who would be awarded the  
3 hardship fund. The remainder is really for the benefit of the  
4 retirees, to be distributed to retirees and their survivors or  
5 to provide a partial subsidy toward a subsidized benefit  
6 program that would be rolled out through a vendor which is put  
7 in place with the intention that it would serve as the benefit  
8 program eligible for the health coverage tax credit should  
9 the -- a pension occurs that would make the retirees qualify  
10 for that program.

11 And so the subsidy we actually permit to it being bid  
12 from various vendors on such programs to put in place. And  
13 then, frankly, for the retirees in terms of the dollar amount,  
14 the amount of money available from the federal government to  
15 the health coverage tax credit really dwarfs the rest of these  
16 economics. And if we could put that program in place with the  
17 ability to use that small amount money from Delphi to obtain a  
18 robust benefit, that will provide a large amount of benefit to  
19 a large number of retirees.

20 THE COURT: So the bulk of the money is intended to  
21 be seed money, in essence, for --

22 MR. GLOSTER: That's correct.

23 THE COURT: Okay.

24 MR. GLOSTER: And it solves a practical problem,  
25 which is vendors rolling out events that -- to retirees who

1 were under sixty-five --

2 THE COURT: Right.

3 MR. GLOSTER: -- are concerned about being able to  
4 put a program in place that would actually be economic for them  
5 and would be economic for the participants without a large  
6 employer subsidy.

7 THE COURT: Right.

8 MR. GLOSTER: So there's at least some subsidy that  
9 we can go to the vendors and say there is, as yet, not any kind  
10 of certainty about timing or certainty of whether that health  
11 care check -- that it will apply or when it will apply. But in  
12 the meantime, there is the subsidized benefit program so you,  
13 Aetna or other vendors, can, in fact, bid on a request for  
14 proposal, and it makes economic sense.

15 THE COURT: Okay. Will your group be in a position  
16 to write a description of what you've just outlined to me that  
17 could go out to the retirees?

18 MR. GLOSTER: Absolutely and we would expect to do  
19 that, Your Honor.

20 THE COURT: Okay. All right. So they'll know what  
21 the money is being used for and, as far as the hardship money,  
22 how they would go about seeking that.

23 MR. GLOSTER: Exactly. And, Your Honor, with respect  
24 to the hardship fund, we expect to put that together very  
25 quickly and have kind of a rolling application process so that

1 our hope is that, by the end of April, we would have  
2 applications delivered to the committee and would have the  
3 ability to act very quickly on some of these hardship  
4 situations, because we're talking about critical medical  
5 benefits for a group of people on a limited income.

6 THE COURT: Right.

7 MR. GLOSTER: And some of the situations they face  
8 are really quite --

9 THE COURT: Pressing.

10 MR. GLOSTER: Quite pressing.

11 THE COURT: Okay. Does anyone have anything more to  
12 say on this motion? All right. I'll approve the motion.  
13 First, it was obviously on short notice. However, the  
14 shortness of the notice was governed by the timing of the case,  
15 including the rolling out of the debtors' termination of these  
16 benefits, effective as of April 1, and also, of course, by the  
17 litigation pending in the district court. But I believe the  
18 notice is adequate under the circumstances, including the fact  
19 that any significant payment by the debtors is subject to  
20 scrutiny and has been scrutinized by several of the parties who  
21 were up here and speaking in connection with the Second  
22 Amendment motion that I just heard.

23 The settlement is clearly reasonable from the  
24 debtors' perspective in that it brings finality to this issue  
25 to the debtors. Normally, that's the only consideration that I



1 would make under the Second Circuit case law. But given the  
2 concern Congress expressed for retirees over their benefits, I  
3 also want to note that I believe that the settlement reflects  
4 the very sophisticated participation by the retirees' committee  
5 and its counsel. And so, while normally I would never do this  
6 in connection with the settlement, again, since it's not my  
7 function to approve the fairness of the settlement to the other  
8 side, it appears to me, under all the circumstances, to be fair  
9 to both sides in light of all the issues and the debtors'  
10 condition and the issues raised by the retirees.

11 So I'll enter the order today. I did add that one  
12 paragraph just as a way to ensure in my mind that, just as  
13 Mr. Gloster outlined, that these settlement proceeds will be  
14 allocated fairly and -- I don't expect a lengthy report; just a  
15 summary of what was implemented.

16 MR. CORNELL: That's fine. We would do that anyway,  
17 the retirees.

18 THE COURT: Fine. Thank you. Okay. Anything else?

19 MR. BUTLER: No. That's it. Thank you very much.

20 THE COURT: Okay.

21 MR. BUTLER: Appreciate it.

22 THE COURT: Thank you.

23 (Proceedings concluded at 12:22 p.m.)  
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I N D E X

R U L I N G S

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

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Clara Rubin

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Date: April 2, 2009